

REMARKS

Applicant has amended his claims in light Examiner's office action (OA) of 2/24/2009. Applicant discusses the OA and the amendments below.

Combination of Cited Prior Art

On pages 2 and 3 of the OA, Examiner rejects the novelty of claims 2 and 22-29 by combining four inventions: Gardenswartz 6,298,330, Goldhaber 5,855,008, Walker 6,086,477, and Vance 6,267,672.

Applicant disagrees that four disparate inventions, which do not themselves suggest combination, should be "combined" to assert obviousness.

Even in combination these inventions do not teach applicant's claimed invention. Vance teaches a contest system to encourage a product purchase, Walker teaches a particular type of lottery method, Goldhaber teaches a system for paying people for attention based on their stored profiles, and Gardenswartz teaches a method for targeting ads and promotions based on an individual's purchase history (purchase profile).

Let us take Gardenswartz, for example (by taking this example, Applicant does not mean to limit his objections to the prior art cited).

Gardenswartz's Title is (emphasis added):

Communicating with a computer based on the offline purchase history of a particular consumer

Gardenswartz's Summary of the Invention states (emphasis added):

Accordingly, one object of this invention is to provide a novel method, system, and computer program product for delivering targeted advertisements to a consumer *based on his or her offline purchase history*.

Gardenswartz's first independent claim states (emphasis added):

1. A method for delivering a targeted advertisement, comprising the steps of: generating a first identifier corresponding to a first computer and associated with an *observed offline purchase history of a consumer...*

Gardenswartz's second independent claim states (emphasis added):

11. A computer readable medium containing program instructions... which when executed by a computer, cause the computer system to perform method steps for delivering a targeted advertisement, said method comprising the steps of:
generating a first identifier corresponding to a first computer and associated with an *observed offline purchase history of a consumer...*

Gardenswartz's third independent claim states (emphasis added):

16. A computer readable medium containing program instructions...which when executed by a computer, cause the computer system to perform method steps for delivering targeted messages, said method comprising the steps of:
monitoring a consumer's offline purchase at a point of sale...
... assigning to the consumer a purchase behavior classification...

Gardenswartz's fourth and final independent claim states (emphasis added):

21. A system for delivering a targeted advertisement, comprising:
means for generating a first identifier corresponding to a first computer and associated with an *observed offline purchase history of a consumer...*

Gardenswartz's Description of Preferred Embodiments makes repeated reference to a central element of his invention: *the purchase history database*.

In other words, Gardenswartz is a profile based system that makes use of a person's *past* purchase behavior to direct ads and promotions to the person.

Applicant's claimed invention is **not** a profile based system – it does not rely on directing payment or messages to a recipient using stored records about the recipient's past behavior or other profile type information. In Applicant's claimed invention, a recipient's past has nothing to do with him/her receiving a payment offer to receive a message from an advertiser.

Thus, the combination of Gardenswartz with the other prior art cited cannot teach Applicant's claimed invention.

Value Contract Process of Gardenswartz

On page 4 of the OA, lines 4-11, Examiner goes on to say that Gardenswartz anticipates Applicant's claims 15-20 and 23-28. Examiner cites col. 15 line 9 to col. 16 line 41, in which Gardenswartz discusses providing "value contracts" that reward a user for buying a product.

As discussed in Applicant's response of 3/28/2008, Gardenswartz delivers "value contracts" based on a user's purchase history.

For example, assume Bill shops at a supermarket for a year and buys *Land O'Lakes* each time he buys butter. Assume Gardenswartz's system is operating at this store and records the purchases. Now, assume that the next time Bill goes to this store, Gardenswartz's system triggers the printing on his receipt of an ad for *Safeway* butter and a value contract, a coupon, for *Safeway* butter. In this way Gardenswartz uses a consumer's history to direct offers.

Applicant's claimed invention is very different because, as noted, it does not use data about a recipient's past to direct payment offers to the recipient.

Applicant's claimed invention is also very different because an ad recipient, *who is a future buyer of the type of product being advertised*, gets paid even if he buys from the advertiser's competitor. In the example above, Safeway would pay Bill to look at its ad for Safeway butter, even though Bill decides to continue buying Land O'Lakes butter.

That is, the user receives a message + payment from an advertiser but does not have to buy the advertiser's product to collect the payment.

Finally, it is important to note that Gardenswartz does not enable direct payment to consumers for their attention to messages.

"Whereby" Clause

In the first paragraph of page 5 of the OA, Examiner points out that the claims do not recite a step or feature for delivering a message to the recipient of an EV payment.

Examiner seems to be correct that the "whereby" clause should be amended. Applicant is not entirely sure about this, but it seems reasonable.

Accordingly, independent claim 2 becomes claim 30, and independent claim 22 becomes claim 38. Both claims 2 and 22 are amended by the following change: "in exchange for attention to a specified message" becomes "in exchange for requesting a specified message."

The rest of the dependent claims have been re-numbered but their language has not changed. Since the independent claims have been amended, the dependent claims have been amended by extension.

The specification pointed out that the novelty and utility of the invention did not require steps or features for delivering the advertiser's message, but that the invention could include such steps or features.

Accordingly, Applicant submits two new dependent claims 46 and 47 regarding message delivery. These claims find support throughout the specification, e.g., on pages 17-19.

Sequence of Events and the Meaning of "Realbuyer" Offer

In paragraphs 2 and 3 of page 5 of the OA, Examiner discusses the sequence of events in the operation of Applicant's claimed invention. Applicant does not fully understand the points being made, but sees that in paragraph 3 Examiner states, "the user is not paid for attention only. The user is required to purchase a product before he/she could get the offer."

This is not correct for two reasons.

One, the user is exposed to a payment for attention offer *before* he/she decides to purchase a product. Probably Examiner meant to say "he/she could get the *payoff*" instead of, "he/she could get the *offer*" in the sentence above (second to last sentence on page 5 of the OA.).

Two, the user is paid for attention only. The user is not paid to purchase a product. An example will illustrate. Assume Fujifilm makes the following offer

to the public, in a magazine ad:

Sony camera lovers, listen up! At Fujifilm, we're so confident about our new camera that we'll pay you \$5 expected value, with a \$500 payoff, to go to our website, Fujifilm.com, and view our online video about the amazing Fujifilm FinePix F200EXR. But you will only be eligible for the \$500 if you buy a Sony DSC-WX1, by October 1, 2009.

Now, in this illustration, Fujifilm is indeed offering to pay buyers simply for their attention. Fujifilm, a direct competitor to Sony, is certainly not paying buyers to purchase a Sony camera. Fujifilm is paying people who plan to buy a Sony camera to receive a message – to view a video – about Fujifilm's camera *before* they buy from the competitor, Sony. That is, Fujifilm is offering to pay for the attention of *people who are going to buy Sony cameras*.

Why would Fujifilm do this? Because, they feel that some percentage of viewers will switch to their camera; they will be able to steal sales away from Sony. Where they fail, and the video recipients still buy from Sony, Fujifilm is assuming the 1/100 risk of paying out \$500 per Sony buyer viewer.

This type of offer and payment is enabled by the claimed invention.

On page 6, the last line of the Response section of the OA, says, "Examiner also would like to point out that the specification does not clearly disclosure (sic) that the purchase does not have to be advertiser's product."

But the specification does disclose this clearly: see, for instance, pages 65-66, and 96-108. For example, on page 66, lines 1-4 state (emphasis added):

This qualifying condition is, itself, an important, novel idea. It is different than a rebate; it is a payment for attention, *regardless of which seller a prospect buys from*. The ability to pay only realbuyers can be a major innovation because, for the first

time, it enables sellers to focus their marketing resources directly on the highest probability prospects.

A "high probability prospect" by definition is not a prospect that must (with 100% probability) buy from a seller that offers payment, as would be the case with a rebate or a coupon offer, in which a recipient must buy from the coupon/rebate issuer in order to collect the payment.

Pages 105-106 discuss realbuyer offers where competitors are specified.

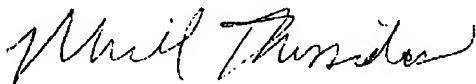
Note, pages 107- 108 of the specification contrast a "realbuyer" offer with a rebate offer, showing how the invention can be adapted to provide rebates.

Request for Interview

Applicant requests an interview.

Applicant appreciates Examiner's hard, lengthy work on this application.

Respectfully submitted,



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